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Attorneys for BNSF Railway Company

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

BNSF RAILWAY COMPANY, on
behalf of THE UNITED STATES OF
AMERICA

Plaintiff,

vs.

THE CENTER FOR ASBESTOS
RELATED DISEASE, INC.,

Defendant.

Civil Action No.: CV-19-40-M-DLC

**DECLARATION OF
W. ADAM DUERK**

Pursuant to 28 U.S.C. § 1746, I, W. Adam Duerk, declare as follows:

1. I make this declaration in support of the motion for attorney fees and other expenses filed by Realtor BNSF in this case. I am competent to make this Declaration.

I received a J.D. from the University of Montana in the Spring of 2004. I was admitted to the Montana bar on October 5, 2004.

2. Since that time, I have tried cases to verdict before juries in state and federal courts, for plaintiffs and defendants, representing corporations and individuals in civil and criminal trials.
3. In many of those trials, I served as either a Prosecutor or a Special Prosecutor in various roles with the state or federal government from 2011-2023.
4. Prior to my recent position with my current private law firm, I served as a federal prosecutor in several different capacities – as an Assistant United States Attorney (AUSA), a Special Assistant United States Attorney (SAUSA), and by appointment as a Special Attorney to the United States Attorney General. While employed by the Department of Justice, I was a prosecutor in the criminal division and a trial attorney in civil cases. My duties included prosecuting complex criminal fraud and environmental cases to jury verdict, assisting with Affirmative Civil Enforcement actions and defending cases brought against the United States under the Federal Tort Claims Act.
5. In addition to prosecuting cases on behalf of the United States, I have been appointed as a Special Prosecutor by the State of Montana as well. These matters have included appointments by the Montana Attorney General, the Montana State Auditor, the Montana Commissioner on Political Practice, and as a Special Deputy County Attorney for various counties within the State of Montana.
6. In each of the foregoing appointments, part of my duty was to prosecute individuals or corporate entities for matters involving fraud.
7. I have been admitted to practice in the State of Montana; the United States District Court for the District of Montana; the United States District Court for the District of Colorado; the Ninth Circuit Court of Appeals; and the United States Tax Court.
9. In 2014, I was admitted to the American Board of Trial Advocates (ABOTA) as a member.

10. The area of federal fraud litigation is complex and specialized. It requires an understanding of the complexities of federal case law, statutes, and regulations.
11. Because fraud litigation has been an area of my specialty, I was able to litigate this matter efficiently and effectively. In this case, I obtained a favorable result for the Relator, BNSF, in this *Qui Tam* matter expending reasonable hours.
12. Based on my experience, I am requesting to be compensated for 2019-2023 at an hourly rate explained in Exhibit 1 hereto. As explained in the brief in support of attorney's fees in this case, these rates are based on the rates that are consistent with rates I have been awarded in other courts in Montana.
13. I am personally familiar with our firm's attorneys who worked on this case, Chad Knight, James Roberts, Nadia Patrick and Seamus Molloy. They are of sterling repute, and I have consistently found their legal counsel, analysis, judgment and work product to be of excellent quality, as it has been in regard to their work on this case.
14. I am also personally familiar with our firm's paralegals who worked on this case, and I have consistently found their judgment and work product to be of excellent quality, as it has been in regard to the work on this case.
15. In preparing this Declaration, I have reviewed our firm's records and attach hereto as Exhibit 1 a summary of the hours which we reasonably and productively expended on this matter.
16. Each timekeeper maintained detailed, contemporaneous daily records for each tenth of an hour of work time. The daily records of my work and the work of other professionals on this matter are available upon request.
17. In reviewing the daily time records for work performed in connection with this case, I have exercised billing judgment and eliminated excess and duplicative entries.
18. In my opinion, the professional hours detailed in our daily records, a summary of which I am submitting to the Court in Exhibit 1, were reasonable and necessarily expended for the preparation and successful presentation of this case. In my opinion, these hours represent time that

would properly be charged to a commercial client. The total number of hours expended is 7,333.7. At the rates explained in Exhibit 1, our firm's total fee request at this time is \$1,468,372.50.

19. I have maintained records of costs and other expenses incurred in this matter. These costs include expert witness fees, deposition expenses, travel and other costs incurred in this litigation. The total amount of these costs amounts to \$322,657.20.
20. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 1st day of August, 2023.

KNIGHT NICASTRO MACKAY, LLC

By: /s/ W. Adam Duerk
W. Adam Duerk
Attorneys for BNSF Railway Company

CERTIFICATE OF SERVICE

I certify on this 1st day of August, 2023, a copy of the foregoing document was served upon the following persons by the following means:

<u>1-3</u>	CM/ECF
<u> </u>	Mail
<u> </u>	Hand Delivery
<u> </u>	Overnight Delivery Service
<u> </u>	Fax
<u> </u>	Email

1. Clerk, U.S. District Court
2. Michael Kakuk
Assistant U.S. Attorney
U.S. Attorney's Office
901 Front Street, Suite 1100
Helena, MT 59626
michael.kakuk@usdoj.gov
3. Timothy Bechtold
Bechtold Law Firm, PLLC
PO Box 7051
Missoula, MT 59807
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KNIGHT NICASTRO MACKAY, LLC

By: /s/ W. Adam Duerk
W. Adam Duerk
Attorneys for BNSF Railway Company

EXHIBIT 1

Knight Nicastro MacKay, LLC - Summary of Fees
BNSF v. CARD - No. CV-19-40-M-DLC

2019				
Timekeeper	Position	Rate	Hours	Total Fees
Adam Duerk	Attorney	\$ 205.00	71.9	\$ 14,739.50
Adam Duerk	Attorney	\$ 215.00	392.4	\$ 84,366.00
Chad Knight	Attorney	\$ 275.00	8.9	\$ 2,447.50
Jim Roberts	Attorney	\$ 245.00	10.8	\$ 2,646.00
Jim Roberts	Attorney	\$ 275.00	11.7	\$ 3,217.50
Nadia Patrick	Attorney	\$ 180.00	24.1	\$ 4,338.00
Nadia Patrick	Attorney	\$ 215.00	11.5	\$ 2,472.50
Athena Patrick	Paralegal	\$ 130.00	25.6	\$ 3,328.00
Adria Kassion	Paralegal	\$ 95.00	59.3	\$ 5,633.50
Adria Kassion	Paralegal	\$ 105.00	31.3	\$ 3,286.50
Jenifer Rosario	Paralegal	\$ 105.00	112.9	\$ 11,854.50
Karen Frisbie	Paralegal	\$ 95.00	1.7	\$ 161.50
TOTALS			762.1	\$ 138,491.00

2020				
Timekeeper		Rate	Hours	Total Fees
Adam Duerk	Attorney	\$ 215.00	507.0	\$ 109,005.00
Chad Knight	Attorney	\$ 275.00	25.1	\$ 6,902.50
Jim Roberts	Attorney	\$ 275.00	26.6	\$ 7,315.00
Nadia Patrick	Attorney	\$ 215.00	38.9	\$ 8,363.50
Seamus Molloy	Attorney	\$ 190.00	37.1	\$ 7,049.00
Athena Patrick	Paralegal	\$ 130.00	60.8	\$ 7,904.00
Adria Kassion	Paralegal	\$ 105.00	36.9	\$ 3,874.50
Brian Gulden	Paralegal	\$ 105.00	88.4	\$ 9,282.00
Jenifer Rosario	Paralegal	\$ 105.00	30.8	\$ 3,234.00
Julie Gibson	Paralegal	\$ 105.00	35.4	\$ 3,717.00
Kimberly Witt	Paralegal	\$ 105.00	103.9	\$ 10,909.50
Suzanne Hester	Paralegal	\$ 105.00	66.7	\$ 7,003.50
TOTALS			1,057.6	\$ 184,559.50

2021				
Timekeeper		Rate	Hours	Total Fees
Adam Duerk	Attorney	\$ 215.00	948.9	\$ 204,013.50
Chad Knight	Attorney	\$ 275.00	38.7	\$ 10,642.50
Jim Roberts	Attorney	\$ 275.00	56.6	\$ 15,565.00
Nadia Patrick	Attorney	\$ 215.00	29.2	\$ 6,149.00
Athena Patrick	Paralegal	\$ 130.00	86.6	\$ 11,258.00
Adria Kassion	Paralegal	\$ 105.00	84.7	\$ 8,893.50
Cindy Hanenburg	Paralegal	\$ 105.00	272.6	\$ 28,623.00
Kimberly Witt	Paralegal	\$ 105.00	10.3	\$ 1,081.50
TOTALS			1,527.6	\$ 286,226.00

Knight Nicaastro MacKay, LLC - Summary of Fees

BNSF v. CARD - No. CV-19-40-M-DLC

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2022				
Timekeeper		Rate	Hours	Total Fees
Adam Duerk	Attorney	\$ 215.00	1,453.7	\$ 312,545.50
Chad Knight	Attorney	\$ 275.00	14.5	\$ 3,987.50
Jim Roberts	Attorney	\$ 275.00	117.1	\$ 32,202.50
Nadia Patrick	Attorney	\$ 215.00	174.6	\$ 37,539.00
Seamus Molloy	Attorney	\$ 190.00	257.6	\$ 48,944.00
Athena Patrick	Paralegal	\$ 130.00	11.3	\$ 1,469.00
Adria Kassion	Paralegal	\$ 105.00	9.2	\$ 966.00
Cindy Hanenburg	Paralegal	\$ 105.00	759.0	\$ 79,695.00
TOTALS			2,017.5	\$ 517,348.50

2023				
Timekeeper		Rate	Hours	Total Fees
Adam Duerk	Attorney	\$ 215.00	893.3	\$ 192,059.50
Chad Knight	Attorney	\$ 275.00	0.6	\$ 165.00
Chad Knight	Attorney	\$ 325.00	0.7	\$ 227.50
Jim Roberts	Attorney	\$ 275.00	0.6	\$ 165.00
Nadia Patrick	Attorney	\$ 215.00	0.7	\$ 150.50
Seamus Molloy	Attorney	\$ 190.00	392.8	\$ 74,632.00
Adria Kassion	Paralegal	\$ 115.00	7.9	\$ 908.50
Cindy Hanenburg	Paralegal	\$ 105.00	402.0	\$ 42,210.00
Cindy Hanenburg	Paralegal	\$ 115.00	264.5	\$ 30,417.50
Yana Legatos	Paralegal	\$ 140.00	5.8	\$ 812.00
TOTALS			1,968.9	\$ 341,747.50

TOTAL FEES	7,333.7	\$1,468,372.50
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EXHIBIT 2
Knight Nicastro MacKay, LLC – Summary of Costs
BNSF v. CARD – No. CV-19-40-M-DLC

TOTAL COSTS		
1.	Filing Fees	\$ 662.00
2.	Deposition Costs	22,714.63
3.	Expert Witness Fees and Costs	288,970.80
4.	Witness Fees and Costs	5,241.14
5.	Process Server / Investigator Fees	1,150.00
6.	Exhibit Fees	1,275.28
7.	Transcript Fees	2,643.35
	TOTAL	\$322,657.20

1. Filing Fees

Document Filed	Amount
Complaint	\$400.00
Pro Hac Appearance Fee – Nadia Patrick	262.00
TOTAL	\$662.00

2. Deposition Costs

Name of Deponent(s)	Date(s)	Amount
Mark Heppe, MD	12/15/2021	\$ 927.60
Stephanie Shaw, Kayla Friss, Tracy McNew, Kerensa Handly	10/19/2021 – 10/20/2021	2,308.00
Liz Voorhies, Tami Reatz	12/22/2021	913.00
Lee Morrisette, MD and Charles Brad Black, MD	1/18/2022 – 1/19/2022	
Jordan Kuhn	03/30/2022	633.00
CARD 30(b)(6)	5/18/2022	685.00
Arthur L. Frank, MD, PHD	7/6/2022	916.00
Charles Brad Black, MD	7/21/2022	1,642.00
Albert Miller, MD	7/25/2022	1,343.00
Cristopher Meyer, MD	8/17/2022	1,253.50
Senator Max Baucus	7/19/2022	1,182.40
Jeffrey Kanne, MD	2/24/2023	575.70
Gary H., Marsha M., Cathie C., Jason C., and Gina H.	3/13/2023 – 3/14/2023	3,570.00
Alisa Koval, MD and David A. Lynch, MD	4/21/2023	1,564.00
Theodore Larson, ATSDR	5/9/2023	1,209.66
Heather Hillman, SSA 30(b)(6)	5/16/2023	2,764.97
Senator Max Baucus	5/25/2023	821.40
Christopher Hermes, RPh	6/5/2023	715.00
Monica Nolan, SSA 30(b)(6)	6/8/2023	3,839.00
TOTAL		\$22,714.63

Knight Nicastro MacKay, LLC – Summary of Costs

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3. Expert Witness Fees and Costs

Expert	Amount
Steven Becker, MD	\$ 8,720.40
Respiratory Medicine Consultants	51,031.71
StoneTurn	184,928.50
Pain & Disability Management Consultants	44,290.19
TOTAL	\$288,970.80

4. Witness Fees and Costs

Witness	Amount
Michelle Boltz, DNP (Depositions – Nov. 18, 2021 & Dec. 6, 2021)	\$1,750.00
Arthur L. Frank, MD, PHD (Deposition – July 6, 2022)	900.00
Hotel Accommodations for Trial Witnesses: Stephen Becker, MD, Thomas S., Connie Sweet	1,430.73
Travel and Hotel Accommodations: Michelle Boltz, DNP (Trial)	472.69
Mary Maynard: Review, appear and read deposition of Tanis Hernandez at trial	419.50
Kristine Wakefield: Review, appear and read deposition of Jordan Kuhn at trial	268.22
TOTAL	\$5,241.14

5. Process Server / Investigator Fees

Party / Witness	Amount
Mark Heppe, MD – Trial Subpoena	\$ 75.00
Scripted Interviews	1,075.00
TOTAL	\$1,150.00

6. Fees for Printed or Electronically Stored Materials Used at Deposition / Trial

Records	Amount
Granite Pharmacy records responsive to subpoena	\$300.00
OCR services of 7,046 pages from CARD of EHH Forms and associated documents	500.00
Trial Exhibits	475.28
TOTAL	\$1,275.28

7. Fees for Printed or Electronically Recorded Transcripts

Transcript	Amount
Transcript of Summary Judgment Hearing (Sept. 12, 2022)	\$355.75
Real Time Trial Excerpts	1,613.45
Excerpt of Trial Testimony of Charles Brad Black, MD	674.15
TOTAL	\$2,643.35